

General Terms and Conditions of Sale and Delivery

1. General

The legal relations between Joh. Cuno König Stiftung & Co KG (hereinafter König) and the Purchaser are exclusively governed by the following General Terms and Conditions of Sale and Delivery. The general terms and conditions of the Purchaser are hereby expressly excluded.

2. Offer and conclusion of contract

All offers are subject to confirmation. Orders, contracts and delivery schedules as well as any changes or additions to them must be made in writing and only become binding when confirmed in writing by König.

Oral agreements made before or at the time of the conclusion of the contract also require written confirmation from König to be valid.

3. Scope of delivery

The written order confirmation from König determines the scope of delivery.

The values found by König during the outgoing goods inspection determine quantities, weights and dimensions, unless proven otherwise. If König determines the number of units by reference weighing, this is the benchmark even if the actual number of units deviates by up to 1 % due to dimensional tolerances etc.

4. Delivery period

Delivery periods are non-binding unless a binding delivery date is expressly agreed in the contract. Transactions for delivery by a fixed date (§ 376 (1) HGB) require express contractual agreement.

A binding delivery period is deemed to have been met if, by the time it expires, the deliverable has been delivered by König to a forwarding agent, carrier or other person or entity designated to carry out the shipment or if the Purchaser has been notified by König that the item is ready for shipment.

The delivery date will be postponed appropriately if the Purchaser is in arrears with his payment or other duties to König, by the duration of the arrears, or if the technical and commercial questions cannot be clarified within a reasonable period of time.

In the event of late delivery by König, the Purchaser may only withdraw from the contract, claim damages in addition to performance and damages in lieu of performance (§§ 323 para. 1, 280 para. 2, 281 para. 1 BGB) after default has been declared and the Purchaser has additionally set a reasonable grace period for performance. This grace period must be set in writing.

The Purchaser may only claim damages for breach of duty in the case of intent, gross negligence, injury to life, body or health, or breach of fundamental contractual duties.

If the Purchaser claims damages caused by delay, these are limited for each full month of the delay to ½% with a maximum of 5% of the value of that part of the total delivery which cannot be delivered or used on time due to the delay.

If dispatch is delayed for reasons for which König is not responsible, the Purchaser will be charged the costs incurred for storage, beginning one month after notification of readiness for dispatch, for at least ½% of the invoice amount per month, unless the Purchaser can prove that no damage at all has been incurred or that the damage was substantially less.

5. Transfer of risk and acceptance

The risk is transferred to the Purchaser at the latest when the delivery parts are dispatched by König, even if partial deliveries are made. This applies unless otherwise agreed in writing.

At the request of the Purchaser, König will insure the shipment against theft, breakage, transport, fire and water damage and other insurable risks at the Purchaser's expense. If the shipment is delayed due to circumstances for which the Purchaser is responsible, the risk is transferred to the Purchaser on the day of readiness for shipment; however, König undertakes, at the request and expense of the Purchaser, to take out the insurance that the Purchaser demands.

Partial deliveries by König are permitted.

Call-off orders must be accepted in their total volume by the Purchaser within 6 months at the latest, calculated from the conclusion of the contract. If no or only an incomplete call is made within this period, König is entitled to deliver or withdraw from the contract. In this case, the contract price less any expenses saved must be paid by the Purchaser. König is entitled to demand quantity discounts promised on the basis of the total order.

6. Use of production equipment and tools

The costs for the production of moulds and tools must be borne by the Purchaser. Moulds and tools will remain in König's possession even after payment.

7. Force majeure

Force majeure, industrial disputes, riots, official measures and other unforeseeable, unavoidable and serious events release König from its duties to perform for the duration of the disturbance and to the extent of its effect. This also applies if these events occur at a time when König is in default of performance. König is required, within reasonable limits, to provide the necessary information immediately and to adapt its commitments to the changed circumstances in good faith.

8. Prices

The prices are ex works including loading, but excluding packaging, unless otherwise agreed in writing. Value added tax at the respective statutory rate is added to the prices.

The prices are calculated on the cost basis of the offer. In the event of changes in material prices, wages or other cost factors, König reserves the right to make price adjustments.

9. Terms of payment

In the absence of a special agreement, payment for series orders must be made within 14 days at 2%, 30 days net. Value-added tax at the respective statutory rate must be due for payment on invoicing.

If agreed payment dates are exceeded, König is entitled to charge arrears interest at 6 percentage points above the respective base interest rate. This also applies in the event that payments are deferred.

The retention of payments or the offsetting of any counterclaims of the Purchaser disputed by König are not permitted.

10. Liability for material defects

The Purchaser is required to inspect the goods immediately after delivery. Recognisable defects must be notified to König immediately in writing, at the latest 10 days after delivery. Non-visible defects are to be reported in writing at the latest 10 days after detection. In the event of late notification of defects, any warranty is void. The condition of the goods is exclusively based on the agreed technical delivery specifications. If we have to deliver according to drawings, specifications, samples etc. of our partner, the latter must assume the risk of suitability for the intended purpose. The benchmark for the condition of the goods in accordance with the contract is the time of the transfer of risk.

Claims for defects will not arise in the case of only insignificant deviation from the agreed quality and in the case of only insignificant impairment of usability.

They also will not arise in the following cases: Unsuitable or improper use, faulty assembly by the Purchaser or third parties, natural wear and tear, faulty or negligent handling, excessive strain, unsuitable operating materials, replacement materials, chemical, electrochemical or electrical influences, unless they are attributable to König.

In the event of a justified notice of defect, the Purchaser is entitled, in consultation with König, to choose between repair or replacement (supplementary performance). After consultation with König, the Purchaser must give König the necessary time and opportunity to carry out all measures that König deems necessary at its reasonable discretion.

If König is not in a position to repair or replace the goods or if König is entitled to refuse subsequent performance in accordance with § 439 (3) of the Civil Code, or if subsequent performance is delayed beyond a reasonable period of time for which König is responsible, or if subsequent performance fails twice, then the Purchaser is entitled to choose between withdrawing from the contract or demanding a corresponding reduction in the purchase price.

Any alterations or reworking carried out improperly by the Purchaser or third parties without the prior approval of König will invalidate any liability for the resulting consequences.

In the event that a claim is made against him by his customer or its customers for supplementary performance, the Purchaser must give König the opportunity to carry out the supplementary performance itself within a reasonable period of time. The Purchaser must impose this duty in accordance with his customer. If the Purchaser breaches this duty, König may reduce the reimbursement of expenses to the amount that would have been incurred if the Purchaser had carried out the supplementary performance himself.

Further claims of the Purchaser, in particular a claim for compensation for damages not incurred on the deliverable itself, are excluded. This exclusion of liability must not apply in the case of intent, gross negligence or culpable breach of material contractual duties, due to injury to life, limb or health or in the case of liability under the Product Liability Act. However, claims for damages due to breach of material contractual duties must be limited to reasonably foreseeable damages typical for the contract, which must be limited to the value of the goods delivered, unless the limitation is excluded due to intentional or grossly negligent conduct or due to injury to life, limb or health. Insofar as the statutory provisions on the sale of consumer goods (§§ 474 ff. BGB), in particular with regard to liability under a right of recourse (§§ 478 ff. BGB), do not apply due to the lack of the statutory prerequisites, a two-year warranty period must apply. By way of derogation, the statutory five-year warranty period pursuant to § 438 (1) No. 2 BGB must apply to defects in items that are normally used for buildings and have caused the defectiveness of such buildings. The legal consequences of a breach of the commercial duty to inspect and give notice of defects (according to § 377 and § 378 HGB) remain unaffected by this.

König accepts no liability for undesirable changes to the component caused by heat treatments or other surface treatments, insofar as they are due to properties of the primary material unknown to König, hidden defects, hardening and similar unforeseeable properties of the primary product. In these cases, the Purchaser is nevertheless required to pay the price of the part.

11. Retention of title

König retains title to the deliverable until all payments arising from the delivery contract have been received.

The Purchaser may neither pledge the deliverable nor assign it as security. In the event of seizure, confiscation or other dispositions by third parties, he must inform König immediately.

In the event of actions by the Purchaser in breach of contract, in particular in the event of default of payment, König is entitled to take back the goods and the Purchaser is required to surrender them.

The assertion of the retention of title and the attachment of the deliverable by König will not be deemed to be a withdrawal from the contract.

If the deliverable is processed with other items not belonging to König, König acquires co-ownership of the new item in the ratio of the value of the deliverable to the other processed items at the time of processing. If the new item must be regarded as the main item, the Purchaser is required to transfer co-ownership to König on a pro rata basis insofar as the main item belongs to him.

The Purchaser is entitled to sell the delivered goods - also processed - in the normal and proper course of business. He must, however, reserve ownership until the complete fulfilment of his purchase price claim. Irrespective of this, the Purchaser herewith assigns to König the claims against his Purchaser to which he is entitled from the resale, including all ancillary rights. In the event of resale after processing, the assignment is deemed to have been made in the amount of the sales value of the goods reserved to König. König also reserves the right to collect the claim directly from the third-party customer, who must be named for this purpose.

12. Confidentiality

Documents of all kinds produced by König or disclosed by the Purchaser - such as samples, drawings, models, data and all other information disclosed and similar - must not be disclosed to third parties unless they are recognisably intended for the public.

König undertakes not to disclose the above documents and objects to third parties and not to use them for purposes other than those contractually agreed. At the same time, König undertakes to conserve these objects carefully at its own expense during the execution of the contract.

13. Third-party property rights

The goods are manufactured according to the specifications of the Purchaser. König can therefore accept no liability whatsoever that the goods produced by König on behalf of the Purchaser are free of third-party rights. In this respect, the Purchaser guarantees to indemnify König in the event that, in the course of the execution of the order, the manufacture and delivery of the goods ordered by the Purchaser encroaches on the property rights of third parties and König is held liable in this respect.

14. Place of performance

The place of performance is the registered office of König.

15. Legal venue

The legal venue for all disputes arising from the contractual relationship - including proceedings relating to bills of exchange, cheques and documents - is Wuppertal District Court if the person appointed is a registered trader, a legal entity under public law or a special fund under public law. König is also entitled to bring an action at the place of business of the Purchaser.

16. Applicable law

In addition to the contractual provisions, the law of the Federal Republic of Germany applicable to the legal relations of domestic parties will apply exclusively, to the exclusion of any conflict of laws provisions.

17. Severability clause

Should a provision of these terms and conditions of sale and delivery be or become invalid, the validity of the remaining provisions and of the contract as a whole will not be affected.